

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

CHRISTOPHER J. VAN ARSDALE
Respondent

Case Nos.: I-00-20433
I-00-20224

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, D.C. Official Code §§ 2-1801.01 – 2-1802.05, and Title 21 Chapter 7 of the District of Columbia Municipal Regulations (“DCMR”). By Notice of Infraction (No. 00-20433) served by first-class mail, the Government charged Respondent Christopher Van Arsdale with a violation of 21 DCMR 700.3 for allegedly failing to properly store and containerize solid wastes (the “Regulation”).¹ The Notice of Infraction alleged that Respondent violated the Regulation on November 26, 2001, at 1107 Holbrook Terrace, N.E., (the “Property”), and sought a fine of \$1,000.

¹ 21 DCMR 700.3 provides: “All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.”

Respondent did not file an answer to the Notice of Infraction within the required twenty days after service by mail.² Accordingly, on January 7, 2002, this administrative court issued an order finding Respondent in default and subject to a statutory penalty of \$1,000 as required by D.C. Official Code § 2-1801.04 (a)(2)(A), and requiring the Government to serve a second Notice of Infraction.

The Government served the second Notice of Infraction (No. 00-20424) by first class mail sent on February 22, 2002. Respondent failed to answer that Notice within twenty days of service. Accordingly, on April 17, 2002, a Final Notice of Default was issued, finding Respondent in default on the second Notice of Infraction and subject to a statutory penalty of \$2,000 pursuant to D.C. Official Code § 2-1801.04(a)(2)(B). The Final Notice of Default also set May 14, 2002, as the date for an *ex parte* proof hearing and afforded Respondent an opportunity to appear at that hearing to contest liability, fines or statutory penalties.

On April 25, 2002, Respondent filed a Statement of Intent To Appear at the scheduled hearing and he answered by denying the violation charged.

Mr. Gerard Brown, the supervisor of Mr. David Hill, the Government inspector who issued the Notices of Infraction, appeared at the hearing on behalf of the Government. The Respondent also appeared, *pro se*, and, without objection by the Government, he was permitted

² Pursuant to D.C. Official Code §§ 2-1802.02(e) and 2-1802.05, when service is made by mail an answer must be filed within twenty days of service, fifteen days plus five additional days for service by mail.

to change his plea to Admit with Explanation.³ Respondent has requested that this administrative court suspend or reduce the fine and the statutory penalties.

Respondent testified that he is the owner of the Property, which is a two-story apartment building with four units. He does not reside on the Property, and he was unaware of the conditions that were the basis for the violation of the Regulation on November 26, 2001. Respondent had contracted with a commercial trash collection company for trash pick-ups at the Property, and pick-ups are scheduled twice a week. Respondent's Exhibit ("RX") 202. Respondent said that if he had known of the unlawful conditions, he would have taken prompt remedial action.

It is undisputed that Respondent did not receive either the first or the second Notice of Infraction. The United States Postal Service ("USPS") returned both to the Government as undeliverable. Petitioner's Exhibits ("PX") 104 – 107. Nor did Respondent receive the order of default issued by this administrative court on January 7, 2002. This order was sent by priority mail/delivery confirmation, and the record reflects that the USPS also returned it as undeliverable. However, Respondent admitted he received the Final Notice of Default issued on April 17, 2002, (RX 203), which prompted his filing of the Statement of Intent to Appear. Respondent explained that he moved more than a year ago from the address to which the Notices and this administrative court's order and Final Notice of Default were sent. The USPS forwarded only the Final Notice of Default to him.

³ Pursuant to D.C. Official Code §2-1802.02(a)(2), an answer of Admit with Explanation permits this administrative court to take the explanation into account in the imposition of a sanction for the infraction.

The Property Detail record of the District of Columbia Real Property Assessment Database maintained by the Office of the Chief Financial Officer of the District of Columbia applicable to the subject Property reflects Respondent's former address. PX 103 (the "Property Detail Record"). The Government inspector testified that the Property Detail Record was obtained on November 26, 2001, to ascertain Respondent's last known address to send the Notices of Infraction.

Respondent said he was not aware of the Property Detail Record or its purpose. Also, he did not know where his real property tax bills were sent by the District of Columbia, since his mortgage company paid the taxes from an escrow account. Accordingly, when Respondent moved he did not send a change of address to the District's Chief Financial Officer. However, Respondent did change his address with the District of Columbia Department of Consumer and Regulatory Affairs in connection with his obtaining a Master Business License to operate the apartment building on the Property, for the license period November 1, 2001, to October 31, 2003. (RX 200).

In response to the Respondent's request for the suspension or reduction of the fine and statutory penalties, the Government inspector opposed any reduction. He represented that the Government's policy was against the suspension or reduction of fines or penalties for violations of the Regulation.⁴

⁴ This administrative court is authorized to suspend or reduce fines and statutory penalties under appropriate circumstances. *E.g.* D.C. Official Code §§ 2-1801.03(b)(6) and 2-1802.02(a)(2). Previously, in other cases involving violations of 21 DCMR 700.3, the Government has responded on the merits to respondents' requests for the suspension or reduction of fines and statutory penalties and has made recommendations. The Government's conclusory response can be given no weight in this administrative court's determination of the appropriateness of a reduction or suspension of the

Based on the testimony of the witnesses, my evaluation of their credibility, and the documents admitted into evidence, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. By his plea of Admit With Explanation, Respondent has admitted that he violated the Regulation as charged in the Notice of Infraction.
2. Respondent's plea was not timely filed.
3. Respondent has accepted responsibility for his unlawful conduct.
4. The conditions resulting in the violation were corrected promptly by the trash collection service engaged by Respondent.
5. There is no evidence in the record of a history of non-compliance by Respondent.
6. It is undisputed that the Respondent did not receive either the first or the second Notices of Infraction.

III. Conclusions of Law

Respondent's plea of Admit with Explanation establishes that he violated the Regulation on November 26, 2001. There is a \$1,000 fine authorized for a first offense of the Regulation. 16 DCMR §§ 3201(a)(1) and 3216.1(b). While the evidence does not warrant the suspension of the fine, a reduction is appropriate. The Respondent has accepted responsibility for the violation, the violation was promptly remedied by the trash collection service engaged by Respondent and

authorized fine or statutory penalty. *DOH v.3237 Limited Partnership*, OAH No. I-00-70320 at n.3 (Final Order, May 22, 2002).

there is no evidence of a history of non-compliance by Respondent. Accordingly, the fine will be reduced to \$500. D.C. Official Code §§ 2-1802.02.02(a)(2) and 2-1801.03(b)(6); 18 U.S.C. § 3553;and U.S.S.G. § 3E1.1.

Regarding the statutory penalty, the Civil Infractions Act requires the recipient of a Notice of Infraction to demonstrate “good cause” for failing to answer within the time allowed by the statute. If there is a failure to answer a second Notice of infraction and good cause is not shown, the statute requires that a penalty twice the amount of the fine be imposed. D.C. Official Code §§ 1801.04(a)(2)(B) and 2-1802.02.02(f).

Service by mail sent to a respondent’s last known home or business address is proper under the Civil Infractions Statute, D.C. Official Code § 2-1802.05, and the Due Process Clause, *Dusenberry v. United States*, 534 U.S. 161 (2002). However, even assuming the service on Respondent at the address in the Property Detail Record met with the statutory and constitutional requirements, the undisputed evidence that Respondent did not receive the Notices of Infraction constitutes good cause for his failure to file a timely answer. Accordingly, I will not impose the statutory penalty.

IV. Order

Based upon the above findings of fact and conclusions of law, it is this _____ day of _____, 2002:

ORDERED, that Respondent Christopher Van Arsdale shall pay a fine in the total amount of **FIVE HUNDRED DOLLARS (\$500)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days

plus five (5) days for service by mail pursuant, to D.C. Official Code §§ 2-1802.04 and 2-1802.05; and it is further

ORDERED, that, if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, by law, interest must accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, beginning with the date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Official Code § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Official Code § 2-1801.03(b)(7).

/f/ 06/04/02

Robert E. Sharkey
Administrative Judge